

Date of Hearing: August 3, 2020

ASSEMBLY COMMITTEE ON HUMAN SERVICES

Eloise Gómez Reyes, Chair

SB 33 (Skinner) – As Amended January 6, 2020

**SENATE VOTE:** 39-0

**SUBJECT:** Electronic benefits transfer system

**SUMMARY:** Requires the California Department of Social Services (CDSS) to convene a workgroup of various interested stakeholders to make recommendations to CDSS on how to prepare the electronic benefits transfer (EBT) system to accommodate online purchases if the ability to make online purchases using the EBT system is made available in California.

Specifically, **this bill:**

- 1) Defines “interested stakeholders” as individuals who utilize the EBT system, CalFresh advocates, the County Welfare Directors Association of California, county social workers or their representatives, United Food and Commercial Workers International Union representatives, United for Respect or other retail worker representatives, food industry representatives, grocery industry representatives, retailer industry representatives, restaurant industry representatives, farmers or farmers’ markets representatives, a representative of the Employment Development Department, advocates for persons of advanced age, persons with disabilities and disability rights advocates, and any other organization or individual identified by CDSS.
- 2) Requires, no later than February 1, 2021, CDSS to convene a workgroup of interested stakeholders to make recommendations to CDSS on how to prepare the EBT system to accommodate online purchases if the ability to make online purchases using the EBT system is made available in California.
- 3) Requires the stakeholder workgroup to meet a minimum of six times, and, further, permits the stakeholder workgroup to convene and meet in subcommittees as necessary.
- 4) Requires CDSS to assign staff, as needed, to assist the stakeholder workgroup in carrying out its responsibilities, and provide technical assistance to the stakeholder workgroup to evaluate the feasibility of its recommendations, as specified.
- 5) Requires the stakeholder workgroup to make recommendations to CDSS regarding the use of the EBT system to make online purchases, and, further, requires the stakeholder workgroup, in developing recommendations, to consider the structure of, and potential changes to, the EBT system.
- 6) Permits the stakeholder workgroup to take into consideration all of the following factors, or any other factors deemed relevant, to ensure the appropriateness of their recommendations:
  - a) The precarious health of low-income consumers and need for food prepared and sold from a source where safety is certain;
  - b) The very low income of CalFresh and cash aid recipients and the harm of high fees;

- c) The role that online purchasing can have in reducing barriers to healthy food for people who live in food deserts or people who live in communities without a grocery store;
  - d) The impact that online purchasing might have on the current grocery, retail, and restaurant industry revenue and jobs; and,
  - e) The limits in federal law and regulations that would prevent the state's establishment of EBT policies on the topic.
- 7) Permits, in addition to recommendations provided during stakeholder workgroup meetings, individual members of the stakeholder workgroup and any other interested stakeholders to provide to CDSS any additional written recommendations on the items considered in the stakeholder workgroup meetings.
- 8) Requires CDSS to review and analyze all recommendations from the stakeholder workgroup, individual workgroup members, and any other interested stakeholders.
- 9) Requires, no later than December 2, 2021, CDSS to report the complete recommendations of the stakeholder workgroup, individual workgroup members, and any other interested stakeholders to the Legislature, and, further, permits CDSS to include in the report CDSS's analysis of the feasibility of implementing the proposed recommendations.
- 10) Permits the stakeholder workgroup to continue to meet on and after January 1, 2022, and until January 1, 2023. During this period, requires the stakeholder workgroup to meet at least quarterly, and as agreed to by CDSS and the members of the stakeholder workgroup. Further, permits the stakeholder workgroup, during this period, to develop recommendations regarding any improvements to the EBT system that are needed to enable online purchases and any consumer protections needed when the EBT system is available to make online purchases.
- 11) Permits, upon completion of the stakeholder workgroup recommendations, as specified, and until January 1, 2023, the stakeholder workgroup to assist CDSS, the Legislature, or both, on any topic relating to the EBT system.

**EXISTING LAW:**

- 1) Establishes under federal law the Supplemental Nutrition Assistance Program (SNAP) pursuant to the Food Stamp Act of 1964 and establishes, in California statute, the CalFresh program to administer the provision of federal SNAP benefits to families and individuals meeting certain criteria, as specified. (7 United States Code Section [U.S.C.] 2011 *et seq.*, Welfare and Institutions Code Section [WIC] 18900 *et seq.*)
- 2) Establishes the electronic benefits transfer (EBT) Act, and defines the EBT system as the program designed to provide benefits to those eligible to receive public assistance benefits such as CalWORKs and CalFresh. (42 U.S.C. 601 *et seq.*, WIC 10065 *et seq.*)

**FISCAL EFFECT:** According to the Senate Appropriations Committee on January 21, 2020, staff estimates approximately ongoing, annual costs of low hundreds of thousands (General Fund, state operations) to establish and administer the workgroup. Costs would include new staff, responsibilities for existing staff, and other operating expenses, such as equipment and per

diem and travel reimbursement costs for workgroup attendees. The number and classification of new staff would depend on the types of data or deliverables requested by the workgroup. In addition, indeterminate cost pressures, up to low millions (General Fund), associated with implementing recommendations specified in the legislative report.

**COMMENTS:**

**CalFresh:** The federal SNAP Program is known as CalFresh in California, and provides food access to low-income individuals who meet certain eligibility criteria. CalFresh benefits are entirely federally funded, and administration at the federal level lies with the United States Department of Agriculture (USDA). The USDA is tasked with setting specific eligibility requirements for SNAP programs across the country, as well as gross and net income tests, work requirements, and other documentation requirements. Currently, the maximum allowable gross income is 200% of the Federal Poverty Level (FPL), although households with elderly members or members with disabilities are not subject to gross income criteria, but must have a net monthly income at or below 100% of the FPL.

In California, CalFresh is administered at the local level by county human services agencies, with federal, state, and county governments sharing the costs of program administration. Benefits are made available to recipients on an EBT card, which is an automated teller machine (ATM)-like card that allows an individual to purchase food at point-of-sale devices in stores. Nearly 4 million individuals in California receive CalFresh benefits; on average, an individual receives \$143.55 per month, and, as of October 1, 2019, the maximum grant amount for a household size of one is \$194.

**SNAP Online Purchasing Pilot:** The 2014 Farm Bill, H.R. 2642 (Lucas), P.L. 113-79, mandated that a pilot be conducted to determine the feasibility and implications of permitting retail food stores to accept SNAP benefits through online transactions. The pilot requires online purchases to be private, secure, easy to use, and provide supports that are similar to those available when in-person SNAP transactions are made. Rules of the pilot program also prohibit SNAP benefits from being used to pay for delivery, service, or convenience fees. In September 2016, the Food and Nutrition Service (FNS) released a request for retail volunteers to solicit applications for a two-year SNAP Online Purchasing Pilot; the application submission deadline for participation in the pilot was November 2016.

On January 5, 2017, FNS announced that seven retailers had been selected for the initial launch of the SNAP Online Purchasing Pilot, including: Amazon, Safeway, and Walmart, among others, with Alabama, Iowa, Maryland, Nebraska, New Jersey, New York, Oregon, and Washington expected to participate in the initial project. As of April 1, 2020, the pilot program was operational in these states, with the exception of Maryland and New Jersey, where the program was non-operational. The authorized retailers working with all pilot states were Amazon and Walmart, while other retailers, such as Wrights Market and ShopRite were working with Alabama and New York, respectively. In most participating states, including California, the only approved retailers participating in the EBT online purchasing pilots are Amazon and Walmart.

It should be noted that, while the 2014 Farm Bill included provisions that required pilot projects to test the feasibility of online purchases using SNAP benefits and report those findings and results to Congress, H.R. 2 (Conway), P.L. 115-334, known as the Agriculture Improvement Act of 2018, or the 2018 Farm Bill, removed those reporting requirements. H.R. 2 also provided for

the nationwide expansion of the pilot projects upon the authorization of the U.S. Secretary of Agriculture, Sonny Perdue, and through the federal rulemaking process.

Pilot project expansion: On April 8, 2020, Secretary Perdue announced the approval of Arizona and California's requests to provide online purchasing of food to SNAP households; as of April 28, 2020, California residents are able to purchase food online using their EBT benefits.

On July 2, 2020, U.S. Senators Dick Durbin and Tammy Duckworth introduced S. 4202 (Durbin), known as the Expanding SNAP Options Act, to further expand online SNAP purchasing choices by enabling additional retailers to participate in the program, among other changes. Specifically, the legislation would:

- 1) Require the Secretary of Agriculture to implement online SNAP purchasing in all states;
- 2) Provide \$25 million to develop and maintain an app-based portal for EBT redemption to support smaller retailers in offering products for online SNAP purchasing; and,
- 3) Provide \$75 million for the creation of a USDA Technical Assistance Center to facilitate online purchasing and use of the portal for smaller retailers, direct-to-consumer farmers, and farmers' markets, as well as provide public information about which local vendors participate in SNAP online purchasing.

As of July 1, 2020, 40 states were participating in the SNAP Online Purchasing Pilot.

***Need for this bill:*** The provisions of this bill would require CDSS to convene a workgroup composed of numerous interested stakeholders, including EBT recipients, CalFresh advocates, county representatives, and representatives from the grocery industry, among others, to make recommendations to CDSS on how to prepare the EBT system to accommodate online purchases if the ability to make online purchases using the EBT system is made available in California. This bill would also require the stakeholder workgroup, in developing its recommendations, to consider a number of factors to ensure the appropriateness of its recommendations, including the health and safety of low-income consumers; the role of online purchasing in increasing food access for individuals who reside in food deserts; and, the impact that EBT purchases may have on the current grocery, retail, and restaurant industry, among others. Finally, this bill would require CDSS to review and analyze the stakeholder workgroup recommendations and report the recommendations to the Legislature no later than December 1, 2021.

According to the author, "Families with children living in poverty depend on the EBT system to prevent malnutrition and the health complications that follow. EBT recipients have limited rights to recover stolen benefits or to resolve consumer disputes. Additionally, because these families are of low-income, they are at a higher risk to food-borne illness and poor customer service. As a result, families need a system that ensures online retailers are food safe and practice fair and reliable food retail practices. [This bill] guides safe and ethical standards for EBT purchasing by establishing a working group composed of major stakeholders, including CDSS."

***Recommended committee amendments:*** The provisions of this bill state that the goal of the stakeholder workgroup is to prepare the EBT system to accommodate online purchases if the ability to make online purchases using the EBT system becomes available in California. Because California was authorized to implement online purchases using the EBT system in April 2020, ***committee staff recommends the following amendments:***

On page 2 of the bill, beginning on line 5, make the following amendments:

3 10072.4. (a) (1) The State Department of Social Services shall  
4 convene a workgroup of interested stakeholders ~~to make~~  
5 ~~recommendations to the department on how to prepare the~~  
6 ~~electronic benefit transfer (EBT) system to accommodate online~~  
7 ~~purchases if the ability to make online purchases using the EBT~~  
8 ~~system is made available in California.~~ review online purchases using the electronic  
benefits transfer (EBT) system, and to recommendations to the department to ensure that  
consumer protections are in place for individuals making online purchases using the EBT  
system.

9 (2) For the purposes of paragraph (1), “interested stakeholders”  
10 includes individuals who utilize the EBT system, CalFresh  
11 advocates, the County Welfare Directors Association of California,  
12 county social workers or their representatives, United Food and  
13 Commercial Workers International Union representatives, United  
14 For Respect or other retail worker representatives, food industry  
15 representatives, grocery industry representatives, retailer industry  
16 representatives, payment technology provider industry representatives, restaurant industry  
17 representatives, farmers or  
18 farmers’ markets representatives, a representative of the  
Employment Development Department, advocates for persons of

1) On page 3 of the bill, beginning on line 16, make the following amendments:

15 (c) The stakeholder workgroup shall make recommendations  
16 to the department regarding strategies to provide consumer protection for individuals  
making online purchases using the EBT system, improved delivery experiences and  
associated delivery fees, and safety of food, including perishables. ~~regarding the use of the~~  
~~EBT system to make~~  
17 ~~online purchases.~~ In developing recommendations, the stakeholder  
18 workgroup shall consider the structure of, and potential changes  
19 to, the EBT system. The stakeholder workgroup may take into  
20 consideration all the following factors, or any other factors deemed  
21 relevant, to ensure the appropriateness of their recommendations:  
22 (1) The precarious health of low-income consumers and need  
23 for food prepared and sold from a source where food safety is  
24 certain.  
25 (2) The very low income of CalFresh and cash aid recipients,  
26 ~~and~~ the harm of high fees, and the limited options with which recipients may pay fees.  
27 (3) The role that online purchasing can have in reducing  
28 barriers to healthy food for people who live in food deserts or  
29 people who live in communities without a grocery store.  
30 (4) The impact that online EBT purchases might have on the  
31 current grocery, retail, and restaurant industry revenue and jobs.  
32 (5) ~~The~~ Any limits, if any, in federal law and regulations that would prevent  
33 the state’s establishment of EBT policies on the topic.  
(6) How to facilitate participation by additional grocery vendors throughout the state  
and in local communities.

**PRIOR AND RELATED LEGISLATION:**

*S. 4202 (Durbin) of 2020*, known as the Expanding SNAP Options Act, would expand certain components of online SNAP purchasing choices by enabling additional retailers to participate in the program, among other things.

*SB 470 (Skinner) of 2019* would have established processes and standards for the use of CalFresh benefits, via the EBT system, for the online purchase of food, and would have required CDSS to work with stakeholders to establish the qualifications and process for approving retailers to accept online cash benefits payments through the EBT system. SB 470 was held on the Assembly Appropriations Committee suspense file.

*H.R. 2 (Conaway), P.L. 115-334, 2018*, known as the Agriculture Improvement Act of 2018, or Farm Bill, repealed various reporting requirements for pilot projects examining the online acceptance of SNAP benefits.

*SB 675 (Skinner) of 2017* would have required the EBT system to only permit online purchases of food from retailers that comply with various specified requirements and the EBT system to prohibit payment of delivery fees for online food purchase using CalFresh benefits. SB 675 was held on the Assembly Inactive file.

*H.R. 2642 (Lucas), P.L. 113-79, 2014*, known as the Agriculture Reform and Risk Management Act of 2014, or Farm Bill, authorized nutrition and agriculture programs in the United States for the years 2014 through 2018.

**REGISTERED SUPPORT / OPPOSITION:**

**Support**

Western Center on Law & Poverty, INC. (Sponsor)  
Alameda County Community Food Bank  
California Alliance for Retired Americans  
California Association of Food Banks  
California Catholic Conference  
California Food Policy Advocates  
CAPP  
Coalition of California Welfare Rights Organizations  
East Bay Community Law Center  
Feeding San Diego  
Food Bank Coalition of San Luis Obispo County  
Food Bank of Contra Costa and Solano  
Foodshare Ventura County  
Hunger Action Los Angeles INC  
Hunger Advocacy Network  
Jewish Family Service of Los Angeles  
Jewish Family Service San Diego  
Los Angeles Regional Food Bank  
National Association of Social Workers, California Chapter  
National Lawyers Guild San Francisco Bay Area Chapter, Doris Brin Walker Legislative Reform Committee

River City Food Bank  
Sacramento Food Bank & Family Services  
San Diego County Childhood Obesity Initiative  
San Diego Hunger Coalition  
San Francisco Senior and Disability Action  
San Francisco-Marin Food Bank  
Second Harvest Food Bank of Orange County  
Second Harvest Food Bank of San Joaquin and Stanislaus Counties  
Second Harvest Food Bank Santa Cruz County  
Second Harvest of Silicon Valley

**Opposition**

None on file

**Analysis Prepared by:** Kelsy Castillo / HUM. S. / (916) 319-2089